UNITED STATES DISTRICT COURT DISTRICT OF MAINE

UNITED STATES OF AMERICA,)	
)	
v.)	Crim. No. 97-0089-B-H
)	
STEPHEN R. SPRAGUE,)	
)	
Defendant)	

RECOMMENDED DECISION ON MOTION TO VACATE, SET ASIDE OR CORRECT SENTENCE PURSUANT TO 28 U.S.C. § 2255

Defendant has filed a Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255, to which the Government filed its response on May 11, 2000. Defendant essentially complains that he has been placed, despite the sentencing judge's recommendation to the contrary, in an institution that does not offer a drug treatment program.¹

The Government correctly asserts in its Response to the Motion to Vacate that this Court could not have *required* the Bureau of Prisons to place Defendant in an institution offering a drug treatment program. The statute providing for drug treatment for federal inmates expressly authorizes only the Bureau of Prisons to select inmates for such programs. 18 U.S.C. § 3621(b); *Venegas v. Henman*, 126 F.3d 760, 762 (5th Cir. 1997); *United States v. Jackson*, 70 F.3d 874, 877 (6th Cir. 1995). Complaints about the Bureau's failure to place an inmate in a drug treatment program, an issue related to the execution rather than the validity of a sentence, are properly

¹ Defendant's Motion also referred to his having waived his right of direct appeal of his sentence. It is unclear whether Defendant sought to raise this waiver as a separate issue, or was simply noting it in support of his assertion that the drug treatment program issue was properly raised by this Motion to Vacate. In any event, the Government correctly notes that there was no plea agreement in this case. Defendant therefore did not waive his right of direct appeal, and the Court's Memorandum of Sentencing indicates that Defendant was indeed informed of his right to appeal the Court's sentence.

brought under 42 U.S.C. § 2241 in the district in which an inmate is incarcerated. *Eg., Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir. 1996). There is no federal prison in this District, and the record indicates that Defendant is now incarcerated in White Deer, Pennsylvania. The Motion to Vacate, Set Aside or Correct Sentence should be DENIED.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Margaret J. Kravchuk United States Magistrate Judge

Dated on: May 24, 2000

CJACNS CLOSED

U.S. District Court
District of Maine (Bangor)

CRIMINAL DOCKET FOR CASE #: 97-CR-89-ALL

USA v. SPRAGUE Filed: 12/17/97

Dkt# in other court: None

Case Assigned to: JUDGE D. BROCK HORNBY

STEPHEN R SPRAGUE (1) JULIO DESANCTIS, III defendant [term 05/07/98]

[term 05/07/98]

[COR LD NTC ret]
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STEPHEN R SPRAGUE [COR LD NTC] [PRO SE] #09594-036 P.O. BOX 1000 WHITE DEER, PA 17887

Pending Counts:

18:922G.F UNLAWFUL TRANSPORT OF FIREARMS, ETC. (Felon in Possession of a Firearm in violation of 18:922(g)(1) and 924(a)(2))
(1)

Offense Level (opening): 4

Disposition

Imprisonment of 37 months; Self report date of 6/12/98; Supervised Release of 36 months; \$100 Special Assessment. AMENDED: Self Report Date extended to 06/16/98. (1)

U. S. Attorneys:

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